

SECTION 4

TELECOMMUNICATIONS SERVICES

ARTICLE 165

Scope

This Section applies to measures of a Party affecting the supply of telecommunications services in addition to Chapters 1, 2, 3 and 4 of this Title, and to Sections 1 and 2 of this Chapter.

ARTICLE 166

Definitions

For the purposes of this Section, the following definitions apply:

- (a) "associated facilities" means associated services, physical infrastructure and other facilities or elements associated with a telecommunications network or telecommunications service which enable or support the supply of services via that network or service or have the potential to do so;

- (b) "end user" means a final consumer of, or subscriber to, a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;
- (c) "essential facilities" means facilities of a public telecommunications network or a public telecommunications service that:
 - (i) are exclusively or predominantly provided by a single or limited number of suppliers;
and
 - (ii) cannot feasibly be economically or technically substituted in order to provide a service;
- (d) "interconnection" means the linking of public telecommunications networks used by the same or different suppliers of telecommunications networks or telecommunications services in order to allow the users of one supplier to communicate with users of the same or another supplier or to access services provided by another supplier, irrespective of whether those services are provided by the suppliers involved or any other supplier who has access to the network;
- (e) "international mobile roaming service" means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications services that enables an end user to use its home mobile handset or other device for voice, data or messaging services while outside the territory in which the end user's home public telecommunications network is located;

- (f) "internet access service" means a public telecommunications service that provides access to the internet and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used;
- (g) "leased circuit" means telecommunications services or facilities, including those of a virtual nature, that set aside capacity for the dedicated use by, or availability to, a user between two or more designated points;
- (h) "major supplier" means a supplier of telecommunications networks or telecommunications services which has the ability to materially affect the terms of participation, having regard to price and supply, in a relevant market for telecommunications networks or telecommunications services as a result of control over essential facilities or the use of its position in that market;
- (i) "network element" means a facility or equipment used in supplying a telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;
- (j) "number portability" means the ability of subscribers who so request to retain the same telephone numbers, at the same location in the case of a fixed line, without impairment of quality, reliability or convenience when switching between the same category of suppliers of public telecommunications services;

- (k) "public telecommunications network" means any telecommunications network used wholly or mainly for the provision of public telecommunications services which supports the transfer of information between network termination points;
- (l) "public telecommunications service" means any telecommunications service that is offered to the public generally;
- (m) "subscriber" means any natural or legal person which is party to a contract with a supplier of public telecommunications services for the supply of such services;
- (n) "telecommunications" means the transmission and reception of signals by any electromagnetic means;
- (o) "telecommunications network" means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the transmission and reception of signals by wire, radio, optical, or other electromagnetic means;
- (p) "telecommunications regulatory authority" means the body or bodies charged by a Party with the regulation of telecommunications networks and telecommunications services covered by this Section;

- (q) "telecommunications service" means a service which consists wholly or mainly in the transmission and reception of signals, including broadcasting signals, over telecommunications networks, including those used for broadcasting, but not a service providing, or exercising editorial control over, content transmitted using telecommunications networks and telecommunications services;
- (r) "universal service" means the minimum set of services of specified quality that must be made available to all users, or to a set of users, in the territory of a Party, or in a subdivision thereof, regardless of their geographical location and at an affordable price; and
- (s) "user" means any natural or legal person using a public telecommunications service.

ARTICLE 167

Telecommunications regulatory authority

1. Each Party shall establish or maintain a telecommunications regulatory authority that:
 - (a) is legally distinct and functionally independent from any supplier of telecommunications networks, telecommunications services or telecommunications equipment;
 - (b) uses procedures and issues decisions that are impartial with respect to all market participants;

- (c) acts independently and does not seek or take instructions from any other body in relation to the exercise of the tasks assigned to it by law to enforce the obligations set out in Articles 169, 170, 171, 173 and 174;
- (d) has the regulatory power, as well as adequate financial and human resources, to carry out the tasks mentioned in point (c) of this Article;
- (e) has the power to ensure that suppliers of telecommunications networks or telecommunications services provide it, promptly upon request, with all the information¹, including financial information, which is necessary to enable it to carry out the tasks mentioned in point (c) of this Article; and
- (f) exercises its powers transparently and in a timely manner.

2. Each Party shall ensure that the tasks assigned to the telecommunications regulatory authority are made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.

3. A Party that retains ownership or control of suppliers of telecommunications networks or telecommunications services shall ensure the effective structural separation of the regulatory function from activities associated with ownership or control.

¹ Information requested shall be treated in accordance with the requirements of confidentiality.

4. Each Party shall ensure that a user or supplier of telecommunications networks or telecommunications services affected by a decision of the telecommunications regulatory authority has a right of appeal before an appeal body which is independent of the regulatory authority and other affected parties. Pending the outcome of the appeal, the decision shall stand, unless interim measures are granted in accordance with the Party's law.

ARTICLE 168

Authorisation to provide telecommunications networks or services

1. Each Party shall permit the provision of telecommunications networks or telecommunications services without a prior formal authorisation.
2. Each Party shall make publicly available all the criteria, applicable procedures and terms and conditions under which suppliers are permitted to provide telecommunications networks or telecommunications services.
3. Any authorisation criteria and applicable procedures shall be as simple as possible, objective, transparent, non-discriminatory and proportionate. Any obligations and conditions imposed on or associated with an authorisation shall be non-discriminatory, transparent and proportionate, and shall be related to the services or networks provided.

4. Each Party shall ensure that an applicant for an authorisation receives in writing the reasons for any denial or revocation of an authorisation or the imposition of supplier-specific conditions. In such cases, the applicant shall have a right of appeal before an appeal body.

5. Administrative fees imposed on suppliers shall be objective, transparent, non-discriminatory and commensurate with the administrative costs reasonably incurred in the management, control and enforcement of the obligations set out in this Section¹.

ARTICLE 169

Interconnection

Each Party shall ensure that a supplier of public telecommunications networks or public telecommunications services has the right and, when so requested by another supplier of public telecommunications networks or public telecommunications services, the obligation to negotiate interconnection for the purposes of providing public telecommunications networks or public telecommunications services.

¹ Administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

ARTICLE 170

Access and use

1. Each Party shall ensure that any covered enterprise or service supplier of the other Party is accorded access to and use of public telecommunications networks or public telecommunications services on reasonable and non-discriminatory¹ terms and conditions. This obligation shall be applied, *inter alia*, to paragraphs 2 to 5.

2. Each Party shall ensure that covered enterprises or service suppliers of the other Party have access to and use of any public telecommunications network or public telecommunications service offered within or across its border, including private leased circuits, and to that end shall ensure, subject to paragraph 5, that such enterprises and suppliers are permitted:
 - (a) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to conduct their operations;
 - (b) to interconnect private leased or owned circuits with public telecommunications networks or with circuits leased or owned by another covered enterprise or service supplier; and
 - (c) to use the operating protocols of their choice in their operations, other than as necessary to ensure the availability of telecommunications services to the public generally.

¹ For the purposes of this Article, "non-discriminatory" means most-favoured-nation and national treatment as defined in Articles 129, 130, 136 and 137, as well as under terms and conditions no less favourable than those accorded to any other user of like public telecommunications networks or services in like situations.

3. Each Party shall ensure that covered enterprises or service suppliers of the other Party may use public telecommunications networks and public telecommunications services for the movement of information within and across borders, including for their intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.
4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of communications, subject to the requirement that such measures are not applied in a manner which would constitute either a disguised restriction on trade in services or a means of arbitrary or unjustifiable discrimination or of nullification or impairment of benefits under this Title.
5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services other than as necessary:
- (a) to safeguard the public service responsibilities of suppliers of public telecommunications networks or public telecommunications services, in particular their ability to make their services available to the public generally; or
 - (b) to protect the technical integrity of public telecommunications networks or services.

ARTICLE 171

Resolution of telecommunications disputes

1. Each Party shall ensure that, in the event of a dispute arising between suppliers of telecommunications networks or telecommunications services in connection with rights and obligations that arise from this Section, and upon request of either party involved in the dispute, the telecommunications regulatory authority issues a binding decision within a reasonable timeframe to resolve the dispute.
2. The decision by the telecommunications regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based and shall have the right of appeal referred to in Article 167(4).
3. The procedure referred to in paragraphs 1 and 2 shall not preclude either party concerned from bringing an action before a judicial authority.

ARTICLE 172

Competitive safeguards on major suppliers

Each Party shall introduce or maintain appropriate measures for the purpose of preventing suppliers of telecommunications networks or telecommunications services who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices. These anti-competitive practices shall include in particular:

- (a) engaging in anti-competitive cross-subsidisation;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other service suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

ARTICLE 173

Interconnection with major suppliers

1. Each Party shall ensure that major suppliers of public telecommunications networks or public telecommunications services provide interconnection at any technically feasible point in the network. Such interconnection shall be provided:
 - (a) under non-discriminatory terms and conditions (including as regards rates, technical standards, specifications, quality and maintenance) and of a quality no less favourable than that provided for the own like services of such major supplier, or for like services of its subsidiaries or other affiliates;
 - (b) in a timely fashion, on terms and conditions (including as regards rates, technical standards, specifications, quality and maintenance) that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network elements or facilities that it does not require for the service to be provided; and
 - (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.
2. The procedures applicable for interconnection to a major supplier shall be made publicly available.

3. Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers as appropriate.

ARTICLE 174

Access to major suppliers' essential facilities

Each Party shall ensure that major suppliers in its territory make their essential facilities available to suppliers of telecommunications networks or telecommunications services on reasonable, transparent and non-discriminatory terms and conditions for the purpose of providing public telecommunications services, except where this is not necessary to achieve effective competition on the basis of the facts collected and the assessment of the market conducted by the telecommunications regulatory authority. The major supplier's essential facilities may include network elements, leased circuits services and associated facilities.

ARTICLE 175

Scarce resources

1. Each Party shall ensure that the allocation and granting of rights of use of scarce resources, including radio spectrum, numbers and rights of way, is carried out in an open, objective, timely, transparent, non-discriminatory and proportionate manner and by taking into account general interest objectives. Procedures, and conditions and obligations attached to rights of use, shall be based on objective, transparent, non-discriminatory and proportionate criteria.
2. The current use of allocated frequency bands shall be made publicly available, but detailed identification of radio spectrum allocated for specific government uses is not required.
3. Parties may rely on market-based approaches, such as bidding procedures, to assign spectrum for commercial use.
4. The Parties understand that measures of a Party allocating and assigning spectrum and managing frequency are not in and of themselves inconsistent with Articles 128 and 135. Each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of telecommunications services, provided that it does so in a manner consistent with this Agreement. This includes the ability to allocate frequency bands taking into account current and future needs and spectrum availability.

ARTICLE 176

Universal service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain and to decide on their scope and implementation.
2. Each Party shall administer the universal service obligations in a proportionate, transparent, objective and non-discriminatory way, which is neutral with respect to competition and not more burdensome than necessary for the kind of universal service defined by the Party.
3. Each Party shall ensure that procedures for the designation of universal service suppliers are open to all suppliers of public telecommunications networks or public telecommunications services. Such designation shall be made through an efficient, transparent and non-discriminatory mechanism.
4. If a Party decides to compensate the universal service suppliers, it shall ensure that such compensation does not exceed the net cost caused by the universal service obligation.

ARTICLE 177

Number portability

Each Party shall ensure that suppliers of public telecommunications services provide number portability on reasonable terms and conditions.

ARTICLE 178

Open internet access

1. Each Party shall ensure that, subject to its laws and regulations, suppliers of internet access services enable users of those services to:
 - (a) access and distribute information and content, use and provide applications and services of their choice, subject to non-discriminatory, reasonable, transparent and proportionate network management; and
 - (b) use devices of their choice, provided that such devices do not harm the security of other devices, the network or services provided over the network.
2. For greater certainty, nothing in this Article shall prevent the Parties from adopting measures with the aim of protecting public safety with regards to users online.

ARTICLE 179

Confidentiality of information

1. Each Party shall ensure that suppliers that acquire information from another supplier in the process of negotiating arrangements pursuant to Articles 169, 170, 173 and 174 use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.
2. Each Party shall ensure the confidentiality of communications and related traffic data transmitted in the use of public telecommunications networks or public telecommunications services subject to the requirement that measures applied to that end do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

ARTICLE 180

Foreign shareholding

With regard to the provision of telecommunications networks or telecommunications services through establishment and notwithstanding Article 133, a Party shall not impose joint venture requirements or limit the participation of foreign capital in terms of maximum percentage limits on foreign shareholding or the total value of individual or aggregate foreign investment.

ARTICLE 181

International mobile roaming¹

1. The Parties shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services in ways that can help promote the growth of trade among the Parties and enhance consumer welfare.

2. Parties may choose to take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, such as:
 - (a) ensuring that information regarding retail rates is easily accessible to end users; and
 - (b) minimising impediments to the use of technological alternatives to roaming, whereby end users visiting the territory of a Party from the territory of the other Party can access telecommunications services using the device of their choice.

3. Each Party shall encourage suppliers of public telecommunications services in its territory to make publicly available information on retail rates for international mobile roaming services for voice, data and text messages offered to their end users when visiting the territory of the other Party.

¹ This Article does not apply to intra-European Union roaming services, which are commercial mobile services provided pursuant to a commercial agreement between suppliers of public telecommunications services that enable an end user to use its home mobile handset or other device for voice, data or messaging services in a Member State other than that in which the end user's home public telecommunications network is located.

4. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

SECTION 5

FINANCIAL SERVICES

ARTICLE 182

Scope

1. This Section applies to measures of a Party affecting the supply of financial services in addition to Chapters 1, 2, 3 and 4 of this Title, and to Sections 1 and 2 of this Chapter.

2. For the purposes of this Section, the term "activities performed in the exercise of governmental authority" referred to in point (f) of Article 124 means the following¹:

(a) activities conducted by a central bank or a monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

¹ For greater certainty, this modification applies to "services supplied in the exercise of governmental authority" in point (o) of Article 124 as it applies to "activities performed in the exercise of governmental authority" in point (f) of Article 124.